

Senate Bill 172

By: Senators Hamrick of the 30th and Mullis of the 53rd

AS PASSED

AN ACT

To amend Chapter 15 of Title 17 of the Official Code of Georgia Annotated, relating to victim compensation, so as to provide for recovery for serious mental and emotional trauma; to update legislative intent; to change definitions and provide for a new definition; to change provisions related to filing of claims; to change provisions relating to investigations; to revise the characteristics of persons eligible for awards; to change provisions relating to the board's required findings and effective dates for certain awards; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 15 of Title 17 of the Official Code of Georgia Annotated, relating to victim compensation, is amended by revising Code Section 17-15-1, relating to legislative intent, as follows:

"17-15-1.

The General Assembly recognizes that many innocent persons suffer personal physical injury, serious mental or emotional trauma, severe financial hardship, or death as a result of criminal acts or attempted criminal acts. The General Assembly finds and determines that there is a need for assistance for such victims of crime. Accordingly, it is the General Assembly's intent that under certain circumstances aid, care, and assistance be provided by the state for such victims of crime."

SECTION 2.

Said chapter is further amended by revising Code Section 17-15-2, relating to definitions, as follows:

"17-15-2.

As used in this chapter, the term:

- (1) 'Board' means the Criminal Justice Coordinating Council.

(2) 'Claimant' means any person filing a claim pursuant to this chapter.

(3) 'Crime' means:

(A) An act which constitutes hit and run as defined in Code Section 40-6-270, homicide by vehicle as defined in Code Section 40-6-393, serious injury by vehicle as defined in Code Section 40-6-394, or any act which constitutes a violation of Chapter 6 or Part 2 of Article 3 of Chapter 12 of Title 16, a violation of Code Section 16-5-70, or a violent crime as defined by state or federal law which results in physical injury, serious mental or emotional trauma, or death to the victim and which is committed:

(i) In this state;

(ii) In a state which does not have a victims' compensation program, if the victim is a resident of this state; or

(iii) In a state which has compensated the victim in an amount less than the victim would be entitled to pursuant to this chapter, if the victim is a resident of this state;

(B) An act which constitutes international terrorism as defined in 18 U.S.C. Section 2331 which results in physical injury, serious mental or emotional trauma, or death to the victim, if the victim is a resident of this state and is outside the territorial boundaries of the United States when such act is committed; or

(C) An act of mass violence which results in physical injury, serious mental or emotional trauma, or death to the victim, if the victim is a resident of this state and is outside the territorial boundaries of the United States when such act is committed.

(4) 'Direct service provider' means a public or nonprofit entity which provides aid, care, and assistance to a victim.

(5) 'Director' means the director of the Criminal Justice Coordinating Council.

(6) 'Fund' means the Georgia Crime Victims Emergency Fund.

(7) 'Investigator' means an investigator of the board.

(8) 'Serious mental or emotional trauma' means a nonphysical injury which has been documented by a licensed mental health professional and which meets the specifications promulgated by the board's rules and regulations relating to this type of trauma.

(9) 'Victim' means a person who:

(A) Is injured physically, who dies, or who suffers financial hardship as a result of being injured physically as a direct result of a crime;

(B) Suffers a serious mental or emotional trauma as a result of being threatened with a crime which could result in physical injury or death; or

(C) Suffers a serious mental or emotional trauma as a result of being present during the commission of a crime."

SECTION 3.

Said chapter is further amended by revising paragraph (3) of subsection (c) of Code Section 17-15-5, relating to filing of claims, as follows:

"(3) When appropriate, a statement indicating the extent of any disability resulting from the injury or serious mental or emotional trauma incurred;"

SECTION 4.

Said chapter is further amended by revising subsection (a) of Code Section 17-15-6, relating to investigations, as follows:

"(a) A claim, once accepted for filing and completed, shall be assigned to an investigator. The investigator shall examine the papers filed in support of the claim and cause an investigation to be conducted into the validity of the claim. The investigation shall include, but not be limited to, an examination of law enforcement, court, and official records and reports concerning the crime and an examination of medical, psychiatric, counseling, financial, and hospital reports relating to the injury, serious mental or emotional trauma, or loss upon which the claim is based. All claims arising from the death of an individual as a direct result of a crime must be considered together by a single investigator."

SECTION 5.

Said chapter is further amended by revising subsections (a) and (h) of Code Section 17-15-7, relating to persons eligible for awards, as follows:

"(a) Except as otherwise provided in this Code section, the following persons are eligible for awards pursuant to this chapter:

(1) A victim;

(2) A dependent spouse or child of a victim;

(2.1) For purposes of an award under subsection (k) of Code Section 17-15-8, any member of the immediate family of a victim of homicide by vehicle caused by a violation of Code Section 40-6-391;

(3) Any person who goes to the aid of another and suffers physical injury, serious mental or emotional trauma, or death as a direct result of acting, not recklessly, to prevent the commission of a crime, to apprehend lawfully a person reasonably suspected of having committed a crime, or to aid the victim of a crime or any person who is injured, traumatized, or killed while aiding or attempting to aid a law enforcement officer in the prevention of crime or apprehension of a criminal at the officer's request;

(4) Any person who is a victim of family violence as defined by Code Section 19-13-1 and anyone who is a victim as a result of a violation of Code Section 40-6-391; or

(5) Any person who is not a direct service provider and who assumes the cost of an eligible expense of a victim regardless of such person's relationship to the victim or whether such person is a dependent of the victim."

"(h) A victim or claimant who has been convicted of a felony involving criminally injurious conduct and who is currently serving a sentence therefor shall not be considered eligible to receive an award under this chapter. For purposes of this subsection, 'criminally injurious conduct' means an act which occurs or is attempted in this state that results in physical injury, serious mental or emotional trauma, or death to a victim, which act is punishable by fine, imprisonment, or death. Such term shall not include acts arising out of the operation of motor vehicles, boats, or aircraft unless the acts were committed with the intent to inflict injury, trauma, or death or unless the acts committed were in violation of Code Section 40-6-391. For the purposes of this subsection, a person shall be deemed to have committed criminally injurious conduct notwithstanding that by reason of age, insanity, drunkenness, or other reason, he or she was legally incapable of committing a crime."

SECTION 6.

Said chapter is further amended by revising Code Section 17-15-8, relating to required findings and amounts of award, as follows:

"17-15-8.

(a) No award may be made unless the board or director finds that:

(1) A crime was committed;

(2) The crime directly resulted in the victim's physical injury, serious mental or emotional trauma, or financial hardship as a result of the victim's physical injury, serious mental or emotional trauma, or the victim's death;

(3) Police records, records of an investigating agency, or records created pursuant to a mandatory reporting requirement show that the crime was promptly reported to the proper authorities. In no case may an award be made where the police records, records of an investigating agency, or records created pursuant to a mandatory reporting requirement show that such report was made more than 72 hours after the occurrence of such crime unless the board, for good cause shown, finds the delay to have been justified; and

(4) The applicant has pursued restitution rights against any person who committed the crime unless the board or director determines that such action would not be feasible.

The board, upon finding that any claimant or award recipient has not fully cooperated with all law enforcement agencies, may deny, reduce, or withdraw any award.

(b) Any award made pursuant to this chapter may be in an amount not exceeding actual expenses, including indebtedness reasonably incurred for medical expenses, loss of wages, funeral expenses, mental health counseling, or support for dependents of a deceased victim necessary as a direct result of the injury or hardship upon which the claim is based.

(c)(1) Notwithstanding any other provisions of this chapter, no award made under the provisions of this chapter shall exceed \$1,000.00 in the aggregate; provided, however, with respect to any claim filed with the board as a result of a crime occurring on or after July 1, 1994, no award made under the provisions of this chapter payable to a victim and to all other claimants sustaining economic loss because of injury to or death of such victim shall exceed \$5,000.00 in the aggregate; provided, further, with respect to any claim filed with the board as a result of a crime occurring on or after July 1, 1995, no award made under the provisions of this chapter payable to a victim and to all other claimants sustaining economic loss because of injury to or death of such victim shall exceed \$10,000.00 in the aggregate; provided, further, with respect to any claim filed with the board as a result of a crime occurring on or after July 1, 2002, no award made under the provisions of this chapter payable to a victim and to all other claimants sustaining economic loss because of injury to or death of such victim shall exceed \$25,000.00 in the aggregate; provided, further, with respect to any claim filed with the board for serious mental or emotional trauma, no award shall be made for a crime occurring before July 1, 2009.

(2) No award under this chapter for the following losses shall exceed the maximum amount authorized:

<u>Category</u>	<u>Maximum Award</u>
Lost wages	\$ 10,000.00
Funeral expenses	3,000.00
Financial hardship or loss of support	10,000.00
Medical	15,000.00
Counseling	3,000.00
Crime scene sanitization	1,500.00

(d) In determining the amount of an award, the director and board shall determine whether because of his or her conduct the victim of such crime contributed to the infliction of his or her injury, serious mental or emotional trauma, or financial hardship, and the director

and board may reduce the amount of the award or reject the claim altogether in accordance with such determination.

(e) The director and board may reject an application for an award when the claimant has failed to cooperate in the verification of the information contained in the application.

(f) Any award made pursuant to this chapter may be reduced by or set off by the amount of any payments received or to be received as a result of the injury, serious mental or emotional trauma:

(1) From or on behalf of the person who committed the crime; and

(2) From any other private or public source, including an award of workers' compensation pursuant to the laws of this state,

provided that private sources shall not include contributions received from family members or persons or private organizations making charitable donations to a victim.

(g) No award made pursuant to this chapter is subject to garnishment, execution, or attachment other than for expenses resulting from the injury or serious mental or emotional trauma which is the basis for the claim.

(h) An award made pursuant to this chapter shall not constitute a payment which is treated as ordinary income under either the provisions of Chapter 7 of Title 48 or, to the extent lawful, under the United States Internal Revenue Code.

(i) Notwithstanding any other provisions of this chapter to the contrary, no awards from state funds shall be paid prior to July 1, 1989.

(j) In any case where a crime results in death, the spouse, children, parents, or siblings of such deceased victim may be considered eligible for an award for the cost of psychological counseling which is deemed necessary as a direct result of said criminal incident. The maximum award for said counseling expenses shall not exceed \$3,000.00 for each claimant identified in this subsection.

(k)(1) In addition to any other award authorized by this Code section, in any case where a deceased was a victim of homicide by vehicle caused by a violation of Code Section 40-6-391 on any road which is part of the state highway system, upon request of the next of kin of the deceased, an award of compensation in the form of a memorial sign erected by the Department of Transportation as provided by this subsection shall be paid to an eligible claimant.

(2) The provisions of paragraph (4) of subsection (a) of this Code section shall not apply for purposes of eligibility for awards made under this subsection, and the value of any award paid to a claimant under this subsection shall not apply toward or be subject to any

limitation on award amounts paid to any claimant under other provisions of this Code section.

(3) The Department of Transportation, upon receiving payment for the cost of materials and labor from the board, shall upon request of the next of kin of the deceased erect a sign memorializing the deceased on the right of way of such public highway at the location of the accident or as near thereto as safely and reasonably possible and shall maintain such sign for a period of five years from the date the sign is erected unless its earlier removal is requested in writing by the next of kin. Such sign shall be 24 inches wide by 36 inches high and depict a map of the State of Georgia, with a dark blue background and a black outline of the state boundaries. A border of white stars shall be placed on the inside of the state boundaries, and the sign shall contain the words 'In Memory of (name), DUI Victim (date of accident).'

(4) In the event of multiple such claims arising out of a single motor vehicle accident, the names of all deceased victims for whom such claims are made and for whom a request has been made by the next of kin of the deceased may be placed on one such sign or, if necessary, on one such sign and a plaque beneath of the same color as the sign. In the event of multiple claims relating to the same deceased victim, no more than one such sign shall be paid for and erected for such victim."

SECTION 7.

All laws and parts of laws in conflict with this Act are repealed.